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jan 1-3md1 mc , EDWIN R. YALE. TO PARENTS AND TEACHERS.At a moeting Education in the "Hall of Representatives" at hington, held Dec. 13, the following resolution was

adopted:
Resolved, That this meeting consider the School Book, called "Town's Spelling Book," an original work of great importance, as it teaches the child the meaning of words, and at the same time their spelling is learned, and that we do strongly recommend its use in all our schools, dec 15-d&c3m

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NEW BOOKS.—The Heir of Sellwood, a novel by Mrs. Gore, author of Pin Money, &c. &c. and Four Years' Residence in Paraguay, under the government of Francia, by the Messrs. Robertson, are both just published and this day received, for sale by F. TAYLOR, or for circulation (together with all other late works) to the subscribers to the Waverly Circulating Library, immediately East of Gudshy's Hotel.

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THE MADISONIAN.

VOL IL-NO. 54. WASHINGTON CITY, THURSDAY, JANUARY 31, 1839.

ON INTERNAL IMPROVEMENTS. SPEECH OF MR. RIVES.

OF VIRGINIA.

On the Bill for obtaining the necessary Survey: on the subject of Roads and Canals. IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1824. Mr. RIVES said, if the importance of any question Mr. RIVES said, if the importance of any question can give it a claim to attention, none is more worthy of profound consideration, than the one now under discussion. It is, in the first place, a question of constitutional right, involving the true interpretation of that instrument, from which we derive our existence as an independent member of the government, and to which we are bound, by the highest obligations, to conform our legislative conduct. But this, although the most important aspect which any subject can assume, under a limited constitution, is not the only interest which belongs to the present question. Its decision must have a pervading influence upon the future policy of the a pervading influence upon the future policy of the country. If that decision should be in favor of the power contended for by the advocates of the bill, it will ecome the foundation of a system of legislation which cannot regard otherwise than as inauspicious to the iberties and dangerous to the best interests of the nation. Under these impressions, incompetent as I am to do justice to the subject, or in any degree to match the ability which has been so conspicuously exhibited in its discussion, I am yet urged by a sense of duty, to contribute the small mite of my humble exertions in defence of what I deem the cause of the constitution, and the principles of sound policy. I am awage Mr. Chair. fence of what I deem the cause of the constitution, and the principles of sound policy. I am aware, Mr. Chairman, that, in investigations of this sort, general reasonings from the spirit of the constitution are not absolutely conclusive. The ultimate inquiry must be, what the framers of the constitution have done, as evidenced by the instrument itself, rather than what they intended to do. But if we can ascertain what was the leading intention by which they were guided, in organizing the powers of the Government, a strong presumption arises that they have done nothing inconsistent with that intention. What, then, permit me to ask, was the cardinal principle, which directed the convention in the execution of their great work! It was this: to transfer to the care of the General Government those obfer to the care of the General Government those ob-jects only in which all the States have a common in-terest, leaving those in which the States have separate and peculiar interests to be provided for by their own domestic governments; and this rule applies alike to every species of federal power, whether it be external or overly species of rederal power, whether it be external or nunicipal. In pursuance of this principle, the General Government was charged with the question of peace or war, the regulation of commerce, the conduct of nego-tiations, and the various other objects connected with our foreign relations. In these, all the States have but one interest, and that, emphasically, a national interest. So, likewise, with regard to that class of powers granted to Congress, which operate internally, such as the powers to establish uniform laws on the subject of bankruptcy, to organize a federal judiciary, to establish a common standard of weights and measures, and to regulate the national currency. All the States stand precisely in the same relation to these powers, and are effected in the same manner, by the exercise of them, in their social and civil transactions. But this is not, nd cannot be the case with internal improvements. They affect parts, and not the whole, of the confederacy They are, from a physical necessity, local in their situa ion, and local in their influence and their benefits .-Take the most extended object of internal improve-ment, the projected road, for example, from Maine to New Orleans, or, if you please, the navigation of the waters of the Mississippi, in which the honorable Speak-er has said twelve States and two Territories are interested, still, comprehensive and important as these schemes of improvement undoubtedly are, they are limited, in their advantages, to particular States, and the rest of the Union has no interest in them. They

to the General Government.

But, here we are met by the argument of the honorable Speaker, Mr. CLAY, that there is an intermediate class of objects, affecting more than one State, and yet not extending to all the States, which require the united to the General Government. not extending to an time states, which require the united means of a confederacy to execute them, and the only confederacy which can now legitimately exist for such a purpose, is that of the Union; because the constitution prohibits one State from entering into compacts or agreements with another State. The honorable gentlenan will excuse me for saying that this argument is bunded on a mistake of the actual provisions of the constitution. The constitution does not prohibit com-pacts between the States, but merely restrains the States rom entering into such compacts, without the consent of Congress. The consent of Congress is required, as a necessary check to prevent the States from forming combinations hostile to the Union, or dangerous to its seace and safety; but, where any number of the States desire to enter into arrangements with each other, for he accomplishment of some beneficial object, in which they have a common interest, it never could ha ed or intended, that the consent of Congress supposed or intended, that the consent of congress would be withheld. The States, in such cases, are still left at liberty to unite their resources, by entering into compacts with each other, subject only to the reasonable control of Congress; and this privilege was no doubt reserved to them with an express view to the very class of objects now in question, which concern two or more members of the confederacy, but yet do not pos bring them within the legitimate sphere of the government of the whole.

are, therefore, not such objects of common interest to all the States, as the constitution intended to transfer

The honorable Speaker, in the course of his argument, laid down a position, which he seemed to consider entirely decisive of the present question. Adverting to the distinction between the articles of confederaon and our present constitution, and remarking that under the former, the General Government, in its most important functions, operated upon the States, and, under the latter, that it acts directly upon the individuals who compose those States, he deduced, as a general principle, that the Government of the Union, as now organized, is wholly independent of the States for the execution of any of its powers. So far is this from being correct, in the broad extent assumed by the honobeing correct, in the broad extent assumed by the nono-rable Speaker, that I have always supposed directly the contrary; that the General Government is dependant upon the States for the execution of all its powers, for it cannot exist, without the concurrence of the States.— Are not your Senators, who compose the other branch of the legislative department of this Government, electof the legislative department of this Government, elected by the Legislatures of the States! Is not your Executive Magistrate chosen, also, by the agency, and under the direction, of the State Legislatures!

[Here Mr. Clay explained. He said he never con-

anded that, if a majority of the States withheld their op-operation, the General Government might not be dissolved; but, his principle was, when the General Go rernment is once organized, and moves, it moves by ts own inherent energy, and acts independently of State

Mr. Rives said, he had not the pleasure of hearing the speech of the honorable gentleman. He had only read the report of it given in the newspapers, and he thought that the principle to which he had referred, as stated in that report, required some qualification. But, even as now qualified, by the explanations of the Speakeven as now qualified, by the explanations of the Speaker, he was not prepared to give his assent to it. I understand the honorable Speaker, said Mr. Rives, now to say, that although the General Government does depend upon the States for its existence, yet, in the ordinary and regular exercise of its vested powers, it is wholy independent of the aid and co-operation of the State overnments. I have always entertained, said Mr. R., a different opinion of our political system, and for that opinion I supposed I had the sanction of high authority. The authors of "The Federalist," in various passages of their celebrated work, speak of the State Go s incorporated into the system of the General Governnent, as auxiliary to its operations, and indeed as indispensable to its maintenance. In one passage, they say emphatically, if the General Government should ever arbitrarily abolish the State Governments, it would be compelled, by the principle of self-preservation, to reinstate them-implying, as it seems to me, in the strong-est manner, the dependence of the General Government upon the aid and co-operation of the State Governments. But let us examine this subject more minutely, in reference to some of the powers of the General Govern-ment. In the exercise of its military power, which has been so much talked of in the course of this discussion, is there not a partial dependence, at least, of the General Government upon the State Governments! The constitution gives to Congress the power to "provide or organizing, arming, and disciplining the militia," and for calling them forth to execute the laws of the Union, to suppress insurrections, and to repel inva-sions;" but, expressly reserves to the States "the apnent of the officers, and the authority of training

the militia according to the discipline prescribed by Congress." Here, then, we find the General Govern-Congress." Here, then, we find the General Government made dependent upon the States for the efficient exercise of a vital power, connected with the peace and safety of the nation; for, what is your militia without officers and without training! So, likewise, in relation to another power of Congress, which has been the subject of much commentary, in the course of this debate.—I allude to the subject of fortifications, arsenals, &c. Amid the various constructions which have been put upon the clause of the Constitution relating to this subject, all have agreed that the exclusive jurisdiction it gives over the sites of these works, cannot be exercised without the consent of the Legislatures of the States in which they are located. Here, then, we have another example of the dependence of the General Government example of the dependence of the General Government upon the State Governments, in a point belonging to one of its highest trusts, the care of the "common defence." of its highest trusts, the care of the "common defence."
Whether, therefore, I look to the general sim and scope
of the Constitution, or to its particular provisions, I cannot acquiesce in the principle assumed by the honorable
Speaker. The application of this principle to the subject of the present discussion, has not been clearly developed, but I presume it is this. If roads and canals
are necessaries the lawitimate operations of the General are necessary to the legitimate operations of the General Government, that Government, being wholly independent of any intrinsic sid in the prosecution of its lawful objects, may make roads and canals for itself, whenever, and wherever it chooses. I shall hereafter endeavor to show, that although roads and canals may be essential to some of the nurroses of the General Co. show, that, although roads and canals may be essential to some of the purposes of the General Government, yet, they are such facilities as would raturally arise in the progress of society, under the care of the State Governments, and that there was, therefore, no necessity to invest the General Government with authority to create them. Any construction which loses sight of the existence of the State Governments, and of the important purposes they were intended to fulfil, in reference to the affairs of the Union, as well as the interests of the respective States, is incompatible with the nature the respective States, is incompatible with the nature of our political system, and necessarily leads us into

There were some other general principles laid down There were some other general principles laid down in the course of this discussion; the bearing and application of which, to the question under consideration, I could not very distinctly discern. I notice them, therefore, only for the purpose of entering my protest against them. An honorable gentleman from New York, (Mr. Storrs) asserted that the General Government was a municipal, or in other words a National Government, as contradistinguished from a Federal Government, as contradistinguished from a Federal Government. tradistinguished from a Federal Government. I would ask that gentleman who were the parties to the formation of this Government! Were they the people of the United States, as composing one entire nation, or as vided into distinct political communities! Unquitionably the latter. It required too, for its establishment not the consent of a majority of the people, merely, but the unanimous ratification of all the States who became parties to it. In the mode provided for its amendment also, the concurrence of three-fourths of the States in necessary to any alteration of its principles, without regard to individual members. These circumstances unequivocally characterize it as a Federal Govern-

In another important relation, the only one involved in this discussion—the extent of its powers—it is decidedly Federal and not National. The authority to which the honorable gentleman has appealed, on another branch of the subject, (the Federalist) says, it is of the essence of a National Government to possess a supreme essence of a National Government to possess a supreme indefinite power over all persons and things, so far as they are the objects of lawful government. But the power of this Government is, by unversal acknowledgment, defined, and limited to special objects. By what process, then, has such a Government, distinwhat process, then, has such a dovernment, distinguished by so many Federal features been converted into a National Government? By a series of refined deductions, which, considering the gentleman's aversion to political metaphysics, does infinite credit to his genius

Having disposed of these preliminary topics, I come now to consider the particular sources in the Constitution from which the alleged power of Congress to make roads and canals have been deduced. The first of these sources is that clause of the Constitution which gives to Congress the power "to establish post offices and post roads," which, it is contended, is an express grant of the roads, which, it is contended, is an express grant of the power to make post roads. Whatever contempt, therefore, gentleman may have for philological disquisitions, or however little they may seem to befit the dignity of legislative discussion, we are necessarily driven to inquire into the true meaning of the word establish. The Hon. Speaker has defined it thus, "to make firm, to fix, to build." I agree with that gentleman in the first part Hon. Speaker has defined it thus, "to make firm, to fix, to build." I agree with that gentleman in the first part of his definition, but I am unable to follow him in the bound by which he has skipped from "to make firm, to fix," to the last interpretation "to build," which seems to me to depart very widely from the other meanings ascribed to the word. The original and literal import of the word is, unquestionably, to render stable, or "make firm;" and by an easy transition in its application to new objects, it has come to signify generally to fix, to settle, to ascertain. Let us apply it in this sense, which is sanctioned by the Speaker's definition, to the subject of post tioned by the Speaker's definition, to the subject of posroads. There exists in the country a great variety roads, passing in different directions, and communicating with different points. It is impossible, in the nature of things, that all of them should be used as post roads. The Constitution, therefore, gives to Congress the name stitution, therefore, gives to or to establish, or, according to the terms of the forego-ing definition, to fix, to settle, to ascertain, which of them should be used as post roads, and to give them a legal character as such. But the honorable Speaker con-tends, that the word "establish" implies something more and is used in a creatize sense; for examples of which he refers to the expressions "establish justice," and "ordain and establish this Constitution," used in the preamble of that instrument. These examples do not appear to me to be very apposite to the purpose fo which they are cited. It has been very properly said that the preamble of the Constitution, in stating it to be one of the objects of the new government " to establis justice," could not have meant that justice was to be created by it. Such an use of the term would be little

was to embody it, to organize tribunals and prescribe forms for its administration, and thus cstablish, or fix it, on sure and permanent foundations. The honorable Speaker, however, contends that in one sense, we do create justice—We create, he says, the criminal justice of the country, because we create the crimes, which are prohibited and punished by our laws.
But in what sense do we create a crime? We do no But in what sense do we create a crime? We do no create the fact which constitutes the crime, we only create the legal character which is imposed upon that

less than sacrilegious. Justice is an abstract principle, an emanation of the divine mind, always and everywhere existing. All that the Constitution could accomplish.

[Here Mr. CLAY explained. He said there was a distinction between acts which are mala in se, and those which are mala prohibita. As to the latter, they are wrong, only because the legislature has made them so and in relation to them, therefore, the law creates th

crime.]
Mr. Rives said, this view of the subject was not affect ed by the explanation of the honorable gentleman. As to that class of public wrongs which are called mala prohibita, it is true they are in themselves indifferent, and ome crimes only because the legislature makes then But what does this prove? It proves only that the legislature creates the legal character or denomination of the fact prohibited, by making that unlawful which was before lawful; but the legislature does not create the fact itself, to which this new character or denomination is given. That exists independently, and in spite of the is given. That exists independently, and in spice of the law. This is not only consistent with, but corroborates law. post roads. Congress, by establishing a post roads, give a new character, a legal attribute to the subject, by making that a post road which was before not a post road; but, in the legitimate exercise of this authority. can no more create the physical, material road, to which it creates the external fact to which a penalty is an nexed. The same explanation is equally applicable to the expression, "We the people, in order, &c. do ordain and establish this Constitution." The people certainly did not create the Constitution, in the sense contended that the word "establish" gives to Congres authority to create post roads. The instrument alread oxisted. It had come from the hands of the convention perfect in all its dimensions, and was submitted to the people for ratification. All that the people did was to extablish it, by giving it the sanction of their approba tion, and investing it with a legal and binding character The same kind of authority is conceded to Congress without hesitation in regard to the establishment of post

But, we are told, triumphantly, that the word estab lish must mean the same thing, in relation to post roads, that it does in relation to post offices, and that, as to post offices, it certainly means to create, because Congress, in establishing a post office, at a particular place, makes a post office which did not exist before. But

what the nature of this creation! Congress declares that a ost office shall be kept at a place where there was nost office shall be kept at a place where there was nost office before. In doing so, it certainly does the create the place at which the post office is established, but gives to that place a privilege and accommodation which it did not possess before. So Congress, in establishing a post road, according to what we deem the true interpretation of this power, makes that a post road which was not a post road before, or, in other words, give to a pre-existing road a charter and in other words, give to a pre-existing road a charter and attribute which did not previously belong to it. The post road is as much created, if gentlemen will insist upon this divine prerogative in the one case, as the post office in the other, and the creation, I will add, no more extends to the road itself, which is the channel of the post route, in the one case, than it does to the road. post route, in the one case, than it does to the place

ich is the scene of the post office, in the other The examples relied upon to support the interpreta on which gentlemen have given of the word "estab tion which gentlemen have given of the word "estab-lish," seems to me, therefore, to fall very far short of their object. On the contrary, they are not only con-sistent with, but formish apt illustrations of, the sense in which we contend it is properly to be understood. The word, in its primitive and most simple sense, means, to render stable, or make firm, and is strictly applicable to natural objects. But it is now more generally applied to intellectual objects, and when so applied, is, of course, used in a figurative sense. Natural objects are estabto intellectual objects, and when so applied, is, of course, used in a figurative sense. Natural objects are established are made firm by means of external support; and, by an obvious analogy, matters of civil and political regulation are said to be established or made firm when we give to them the support and sanction of late. In this sense, the word is uniformly used in the constitution, and all similar instruments, with such modifications only as necessarily arise from the nature of the subject to which it is applied. If it was intended, as gentlemen allege, to root congress the power to make post which it is applied. If it was intended, as gentlemen allege, to g > to Congress the power to make post roads, why was not that power granted in terms which every person would have understood, and about which there could be no controversy? Was the powerty of the language so great, or were the framers of the Constitution so deficient in their knoweldge of it, as to have supplied no other word fitted to convey the idea? When we speak of the erection of a house, we do not say that such an one has established a house, but that he has brill it. If it had been intended to give to Congress the power now claimed for it, why did not the framers of the constitution say, in so many words, that Conformed the constitution say, in so many words, that Conof the constitution say, in so many words, that Congress shall have power to make and construct post roads. Those words were at hand, and were well adapted to the purpose of conveying such a power. That they, or other words of plainly equivalent meaning, were not used, is evidence that the power they import was not in-

It was not necessary to the nature and object of this grant that Congress should possess the power to make post roads. The object of the grant was the conveyance of the mail, and the transmission of intelligence through the country. It never could have been con-templated that intelligence should be transmitted to an unsettled country, where there were no persons to re-ceive it. But, as soon as a country becomes, settled, roads necessarily exist. The great interests of society, the operations of commerce, and the convenience of private intercourse, necessarily gives rise to them; and as the population and demands for intelligence increase-the facilities of communication increase also The same roads which answer the ordinary purposes of society, would certainly suffice for the simple object of transporting the mail. It never could have been intended, in reference to such an object, to confer upon Congress the disproportionate power of opening and constructing roads through the territories of the states. Whether, therefore, I look to the language of the constitution, or to the policy of its provisions, in relation to this subject, I am alike constrained to discard the construction which claims for congress the power in question, under the clause we have been considering.

The next source which the advocates of the bill have

appealed to for the authority to execute a system of in-ternal improvements, is, the military power of the go-vernment. The authority claimed under this part of the constitution extends to canals as well as roads. It is not, however, like the authority asserted in relation to post roads, claimed as an express power, but only as an incidental power, or means of carrying another power into effect. The first inquiry which presents itself, therefore, is, as to the true nature and extent of incidental powers. It must never be forgotten that this government is one of limited and defined powers. However, and the state of the contract of the c ever ready gentlemen are to admit this proposition when their assent is distinctly challenged to it, they seem habitually to lose sight of it in their reasoning upon constitutional questions. All the powers granted to the government are enumerated in the constitution; but, as it was impossible to foresee every individual ac of legislation which might become necessary to carry these powers into effect, Congress is in general authorized to do any act which shall be "necessary and proper" for carrying the granted powers into execution, but mone other. If we depart from this limit, we at once change the character of the government, as pro-sessing special and defined powers only, and convert it any measure is proposed, therefore, the first question to be asked is, Is the authority to adopt it expressly grant-ed in the constitution? If it be not, the next question is, Is it a necessary and proper means of carrying into is not pretended that the authority to make roads and canals for military purposes is expressly granted to Con-gress, is it, then, a necessary and proper means for carrying into execution the military powers which are granted I will not deny that roads and canals are useful, or, if you please, necessary, to the military operations of the government. But this is not the true question. The real point of inquiry is, Is it necessary to the military operations of the government that Congress should possess the power to make them! Roads and canals would exist from the influence of other and canais would exist from the influence of other causes, without invoking the agency of Congress.—
They are, as already suggested, the natural and invariable accompaniments of population, in every country.
The wants and enterprise of individuals, the common interests of society, and the paternal care of the State interests of society, and the paternal carry charged with governments, which are more particularly charged with the domestic nolice of the country, would bring them into existence. The same causes would ensure their multiplication and improvement. As the country improved in wealth and population, the means of communication would improve with it. The members of the nication would improve with it. The members of the Convention, as men ordinarily conversant, at least, with human affairs, must have foreseen this natural course of things, and could not have deemed it necessary to give to Congress the power of creating channels of communication, which would certainly grow out of the wants nication, which would certainly grow out of the wants of society and the beneficent superintendence of the State governments. All that was necessary, was to give to the general government the right of using these highways, in prosecuting its military and other lawful operations, and this right is conceded to it in the fullest extent. Will any gentleman deny that food and clothing are as necessary for the subsistence of the soldier as are as necessary for the subsistence of the source as roads for him to march upon? And yet, it will not be contended that Congress has authority to condemn and occupy large portions of the territory of the States for farms to produce the one, or factories to supply the other. Why? Because the natural wants of society furnish the best security that these articles will be pro duced, and render it necessary to invest the government with any authority for the purpose. But it is said that, in the defence of the country, and the military operations connected with it, other and better channels of communication would be required than those already ex sting under the authority of the States. Let us pause and see to what extent this idea would carry us have an extensive frontier, and are exposed to attack or every side of it. On the Atlantic coast we are exposed to the hostilities of any European power, and, through the whole extent of our inland frontier, we are liable to the incursions of our British, Spanish, and Indian neighbors. If we undertake a system of roads and canals with a view to facilitate the operations of war, as it is uncertain in what quarter we shall be assailed, we must extend them to every point of our frontier. The whole face of our territory would thus be covered with military roads and canals. Is not this a solecism in legislation? Military roads and canals, which would be used for civil and commercial purposes more than a thousand times for once that they would be applied to military purposes! Whether they would ever be used, indeed, for military purposes, would depend upon remote and dubious contingencies, the occurrence of which no man

But leaving this view of the subject, and returning to the principles first laid down, as to the just extent incidental powers of the government, I ask, e possible to justify the measure proposed, by the application of these principles. A national system of roads and canals; under the exclusive patron-age of Congress, cannot, in any sense of the term, be said to be necessary to the making and prosecuting of war. Wars have been made and prosecuted, and successfully prosecuted, without any such successfully prosecuted, without any such sys

tem. All that can be said of it is, that it might have a tendency to give greater effect and increased energy to the exertion of the national force, in time of war. But, if the power to declare war authorizes Congress to do every thing which may have a tendency to add to the strength and resources of the nation, in a military point of view, then, there is nothing connected with the "general welfare," which Congress may not do; for, whatever advances the nothing connected with the "general welfare," which Congress may not do; for, whatever advances the interests of learning, of manufactures, of agriculture, of commerce, or, in any manner promotes the internal prosperity of the country, certainly has a foreign country. A principle of construction, leading to such consequences, cannot be maintained.—The honorable Speaker expressed his acquiescence in the principles asserted by Virginia, in '98. Those principles were embalmed and immortalized in the celebrated report of Mr. Madison, which has been mentioned in the course of this debate. The principles contained in that report, do not derive their sanction from the great name alone with which they are associated. They received a still higher sanction—that of the American people. For, it was the potent influence of these very principles, which wrought, by the voice of the people, that change of men and measures, in the administration of the government, which has been emphatically styled, The civil revolution of 1801. If any writings, therefore, can be fairly appealed to, as authority, in constitutional discussion, it is this report. [Here, Mr. Rives read extracts from "Madison's report."] The simple criterion, then, is this—the measure sought to be adopted, as incidental to an express power, must have an "immediate and appropriate relation to that power, as a means necessary and proper for carrying it into execution. "A lendency merely, in the measure to promote an object, for which Congress is amborized to provide," does not justify its adoption. Now, does not all that has been said, and can be said, in favor of a national system of roads and canals, amount to this—that they would have a tendency to promote or facilitate the operations of war—not that they have an immediate and appropriate recanals, amount to this—that they would have a tendency to promote or facilitate the operations of war—not that they have an immediate and appropriate relation to the power of making war—as means, necessary and proper, for carrying that power into execution. One of my colleagues (Mr. J. S. Barbour,) adverted to this rule for the deduction of incidental powers, and seemed to think it too rigid, because, he said, it excludes a choice of means. Sir, it does not exclude a choice of means; it only limits that choice. And permit me to say, that, in order to preserve the exclude a choice of means; it only limits that choice. And permit me to say, that, in order to preserve the true character of this government, it is as accessary to limit the means of executing its powers, as to limit the powers themselves; for in the language of the distinguished authority which I have just quoted, "it is wholly immaterial whether unlimited powers be exercised in the name of unlimited powers, or in the name of unlimited means of carrying limited powers into execution."

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powers into execution."

But, we have been gravely told, that roads and canals are fortifications. Why, sir, a lively imagination, and an ardent zeal, may convert any thing into fortifications. It may be said, with as much justice, and as little violence of metaphor, that the hearts of our people are fortifications: for, after all, the moral energies of a nation are as important to its defence. powers into execution." nergies of a nation are as important to its defence, as physical works of any sort. As a part, then, of this system of military defence, we must establish schools and colleges, to imbue the minds of our youth with the love of liberty, a knowledge of the principles of our free institutions, and a loyal and patriotic devotion to their country! In like manner the granaries of the farmer are fortifications—the workshops of the mechanic are fortifications—for they furnish the indispensable means of sub-istence to the troops who are to defend you. Thus, by the magic influence of language, Congress, in the exercise of its military functions, may invest itself with a general and unlimited patronage of all the great interests of society-its education, its agricul-

ure, its industry.

It has been triumphantly asked, if Congress can It has been triumphantly assed, it Congress can erect forts and dock-yards, may they not make roads to go into them? Unquestionably, the right to erect these works, necessarily implies the right of teay, by which a communication is to be had with them. If there be no road leading to them, the government may render its right of way effectual, by opening a road for the purpose of communication. But what is the road, in this case? It is strictly an epurpose to the four or dockward, and is confined. ourtenance to the fort or dock-vard, and is confine to the purpose of communication with it. It is a thing wholly distinct from a system of internal im-provements, having no actual connection with any provements, having no actual connection with any military work, nor bearing any peculiar and appropriate relation to military operations. There can be no doubt that the General Government has a right of passage through the territory of the states for any of its lawful purposes, and it may, therefore, in time of war, open a military road, when it is necessary to the accomplishment of any particular military movement. In such a case, it has a right to a passage; and there can be no passage without a road. But the road is then made, and used pro hac vice only, and as soon as the passage is effected, all property in, or jurisdiction over it, ceases and dies. The right strictly commences, and terminates with the occasion strictly commences, and terminates with the occasion of its exercise. This case, therefore, affords no countenance to a claim of a general power to execute and maintain a permanent system of internal improvements, in reference to future and remote con-tingencies, which may never occur. In the view which I have taken of this subject, I have not found it material to inquire into the right which has been claimed by the general government of possessing itself of the soil of the states, when it is necessary to the execution of any of its powers. It is admitted by all that it cannot do so, except in cases where it is necessary to the execution of some of its powers. In each particular case, therefore, the question recurs, Is the proposed occupation of the soil of the states necessary to the execution of any of the powers. of the government? My object has been, to show that the occupation of it, for the purpose of making roads and canals, is not necessary to the execution of the military power of the government, and cannot be justified by any sound doctrines of constitutional

The only remaining ground, worthy of particular consideration, upon which the authority of this government, to make roads and canals has been assert is that portion of the Constitution which gives ed, is that portion of the Constitution which gives to Congress the power "to regulate commerce among the several States." The honorable gentleman from Delaware, (Mr. McLane,) seemed to treat this as a question of incidental power, but it is strictly and exclusively a question of express power. The whole controversy depends upon the true import of the word "regulate." If to "regulate," are "prevoted or to "facilitate" then the port of the word "regulate." If to "regulate," means to "promote" or to "facilitate," then the power to make roads and canals, as an ordinary and natural mode of facilitating or promoting commer seems to be clearly comprehended in the terms the grant. If, however, to regulate, means to make rules, as it certainly does, in the plain and common use of the word, then it gives to Congress no other power than that of making the rules, or prescribing the terms, upon which commerce among the States shall be conducted—that is, the power of making commercial regulations, as applicable to the reciprocal trade of the States. But, would any person call roads and canals commercial regulations? The whole question, then, might be safely left to an un sophisticated common sense interpretation of the lan guage of the Constitution; but, as the argument of the gentleman from Delaware was certainly an ori-ginal and ingenious one, I beg leave to analyse and ex-amine it more particularly. The outline of the ar-gument was this: that the object of granting to Congress the power of regulating commerce among the States was not, as had been supposed, to prevent one State from laying burthens on the productions of another State, passing through its jurisdiction, (that object being adequately provided for by another, clause of the Constitution,) but to prevent a greater nischief, absolute prohibitions of the passage, which f they should occur, it would be competent for Con-ress, under this power to remove; that, if Con-ress can remove legal restraints upon the trade of the States, it can remove physical obstructions; and, if it can remove physical obstructions to the trade of the States, it can create new channels for it. However nicely concatenated this chain of deductions seems to be, I shall endeavor to show that some of its links are too feebly connected to sustain the conclusion which depends upon it. The gentleman's first soon which depends upon it. The gentleman's first position is, that the power to regulate commerce among the States, was not given to Congress to prevent one State from imposing duties on the productions of another, passing through its jurisdiction, because, if this were the only object, the power would be nugatory, another clause of the Constitution having expressly restrained the States from laying ing expressly restrained the States from laying duties on imports or exports. In relation to this po-sition, I will only remark, that the bon-rable gentle man seems to have mistaken the purpose for which the passage in the Federalist upon this subject was read, by my able colleague, (P. P. Barbour,) who opened this discussion. That purpose was not to show, nor does the authority cited import, that the

only object of the power in question was to prevent the States from imposing duties on the productions of each other, passing through their respective jurisdictions. It was mentioned merely as one of the objects of the power. A farther object, undoubtedly, was, as the gentleman himself has satisfactorily shown, to prevent arbitrary interruptions of the trade of the States, arising from acts of positive prohibition and other similar impediments. But the gentleman is not satisfied even with this extension of the power. He says that a power of such apparent magnitude could not have been intended to be passive—a monument of the own insignificance—and that, magnitude could not have been intended to be passive—a monument of its own insignificance—and that, if it extends to removing no other obstacles than such as may be interposed by adverse and unfriendly legislation of the States, it becomes utterly passive. Why, sir, it is, in this respect, like many other powers granted by the Constitution. The powers to "repel invasiors" and to "suppress insurrections," are passive, until the proper occasions occur to bring them into action. And the honorable gentleman will permit me to remind him that this very horror of passive authority acting upon one of the powers just mentioned, was this—the powers to "suppress insurrections" implies the power to prevent them, and the government tend or lead to them—libels upon the government tend or lead to insurrections: therefore, Congress may pass a sedition lave for the punishment of libels. therefore, Congress may pass a sedition law punishment of libels.

punishment of libels.

The system of reasoning now employed to justify the exercise of power contemplated by this bill, is equally and, indeed, te my mind, much more forced and arbitrary, in its chain of inferences. What is it! The power to regulate commerce among the states authorizes Congress to remove legisfative restraints, imposed by one state upon the trade of another, passing through its jurisdiction. The power to remove legislative restraints, implies the power to remove natural obstructions, and the power to remove natural obstructions, implies a power to give artificial facilities; or, in other words, to make roads and canals. But, it is true, that the power to remove legislative restraints implies the words, to make roads and canals. But, it is true, that the power to remove legislative restraints implies the power to remove natural obstructions, and to give artificial facilities? The one aims only to protect commerce in its actual channels: the other seeks to open additional channels for commerce. The object of the former is merely to accure the free use of existing highways; the effort of the latter, is to create and construct new highways. These things are, in their natures, so essentially distinct, that an inference from one to the other, is wholly arbitrary and inadmissible. But the other, is wholly arbitrary and inadmissible. But the that this power will remain passive, unless it is exerted in giving artificial facilities to trade. It has already en exerted, and copiously exerted, in the various an minute regulations connected with the coasting trade, and this was probably the chief, if not the only, employment of it, contemplated by the framers of the onstitution.

Constitution.

The gentleman read a passage from Vattel, for the purpose of proving the connection between good roads and canals, and the welfare of trade. But nothing is gained by this position, which is very readily admitted, until it is also proved that Congress has a general power to promote the neelfare of trade. The application of the authoristic that the second control of the second con this authority, therefore, proceeds upon an assumption of the very point in dispute. A similar defect exists in the argument which claims for the general government the same authority to make roads and canals between the states, that the government of each state has to make roads and canals within its own limits. The state covernments have neglected the right to make roads. governments have, undoubtedly, the right to make roads and canals within their respective limits; but from what does this right result! From the general discretionary power which the state governments possess, to provide for the public welfare. Before the argument can be sustained, then, it must be shown that the general government possesses a like discretionary power, to provide for the public welfare. The state governments do vide for the public welfare. The state governments do not make roads and canals by virtue of to regulate commerce among the several portions of the same state. If they possessed no other power than this, it would not be competent for them to make roads and canals.

Much reliance has been placed, by the gentleman

Much reliance has been placed, by the gentleman from Delaware, as well as other gentlemen who have participated in this discussion, upon what is said to have been the practical construction of the power to "regulate foreign commerce." It is contended that Congress possesses the same power in relation to "commerce among the several states," that it does in relation to "foreign commerce:" and that, as, under the power of regulating foreign commerce, it has crected light houses, beacons, buoys, &c. with a view to give safety and facility to that commerce, it may, under the power of "regulating commerce among the states," construct roads and canals, to give safety and facility to the internal trade of the country, I beg leave to ask those gentlemen, by what authority they refer the erection of the light houses, beacons, &c. to the power to regulate foreign commerce! There is no evidence regulate foreign commerce! There is no evidence upon the face of the laws thomselves, which were passed for their erection, that Congress legislated under the idea that they derived the right to erect them from the power to regulate foreign commerce. There is collateral evidence, however, that they legislated with reference to another clause of the Constitution. It was mentioned by my colleague, who opened this discussion, (Mr. P. P. Barbour,) that the statute book contained a (Mr. P. P. Barbour) that the statute book contained a list of cessions made by the several states, of the sites of these buildings. The only cases in which the Constitution requires the previous consent of the states to the altenation of territory, are those relating to the seat of government, and all such places as may be acquired "erection of forts, dock vards, &c. and other needful buildings." It would seem, therefore, from the formal cessions made by the states, of the sites for light-houses, &c. that Congress legislated with reference to this part of the Constitution. Another explanation has been suggested, by an honorable gentleman from New York, (Mr. Wood,) who refers the erection from New York, (Mr. Wood.) who refers the erection of these buildings to the power to lay and collect duties. The duties laid, accrue only upon the arrival in our ports of the goods and vessels charged with them. Whatever, therefore, gives security and facility to an entrance into our ports, has an immediate relation to this branch of public revenue. I have mentioned these explanations only for the purpose of showing that the erection of light-houses, beacons, &c. can be accounted for, and have been accounted for, plausibly at least, without referring them to the power of regulating foreign com-merce. It is not necessary for me to decide under what clause of the Constitution these buildings were I will only say, that both of the explanations just mentioned are as satisfactory to my the one which refers them to the power of the one which refers them to the power of regulating foreign commerce. Gentlemen have taken it for granted, without offering to prove, that they were erected under this clause of the Constitution, for the sake, I presume, of the precedent it would afford them, in the interpretation of the power to regulate commerce among the states.

I beg leave, however, to say, that, whatever may have been the construction of the constitution under which these lighthouses were built, or any other act that has been done by preceding Congresses, I cannot regard such construction as legitimate and conclusive evidence of the true meaning of the constitu-tion, and binding upon ourselves and our successors. The gentleman from Delaware said it was a great error to consider the authority to make canals as a distinct, instead of a subsidiary power. If any power, from its magnitude and extent, ought to be regarded as a distinct and independent power, the base of the constitution has granted, by distinct to consider the authority to make road it is this. The constitution has granted, by distinct clauses, several other powers which might, with much more propriety, have been regarded as subsidiary powers, and left to implication. What would seem more naturally to appertain to the regulation of commerce among the States than the power of coining money, the very instrument of commerce, of fixing its value, of establishing a common standard which and measures notifers have on the subfixing its value, of establishing a common standard of weights and measures, uniform laws on the subject of bankruptcy, and post offices and post roads? Yet, all these powers are the subjects of express and distinct grants! What could more properly be considered as incidental to the power of declaring war than to raise and support armies, provide and maintain a navy, make rules for the government of the land and naval forces? And yet it was thought necessary to give these and other similar powers by direct and explicit declarations in the constitution! It will not be said that roads and canals bear a more direct and immediate relation to the military more direct and immediate reasons to an accommendation of the Government, or are of less dignity and importance in their character, then many of the powers just enumerated. Why, than many of the powers just enumerated. Why then, I will ask the gentleman from Delaware, if the power to make them was intended to be given, was t not, in like manner, distinctly granted

It not, in like manner, distinctly granted?

In inquiries of this sort, Mr. Chairman, the opinions of no man, however illustrious by his virtue or his wisdom, ought to preclude the exercise of our own deliberare judgments. There is, however, a degree of rerare judgments. There is, however, a degree of respect which all acknowledge to be due to the opinions of the distinguished men who either participated in the formation of our government, or have since borne a conformation of our government, or have since borne a conformation of our government, or have since borne a conformation of our government, or have since borne a conformation of our government, or have since borne a conformation of our government, or have since borne as the following since the conformation of the c spicuous part in its administration. It is known to the committee that three successive Presidents of the United States have felt it their duty to announce to Congress, in the most solemn form, their settled conviction has the that this government does not possess the power now in question. I will not, however, insist upon their testi-mony, because they are Virginians, and we have abun-dant evidence that Virginian politics have gone out of favor. There is an authority, however, which I will quote, and the weight of which I feel myself entitled to